CITY OF SOMERVILLE, MASSACHUSETTS
OFFICE OF HOUSING STABILITY
JOSEPH A. CURTATONE
MAYOR

MEMORANDUM

TO: City Council
FROM: Ellen Shachter, Hannah Carrillo and Annie Connor
DATE: March 4, 2019
RE: Condo Conversion – Responses to selected comments

Given the complexity of the issues raised regarding the Administration's proposed redraft of its Condominium Conversion Ordinance ("Ordinance") the Administration is providing guidance on its thoughts and/or recommendations regarding comments received in connection with the City Council's January 31st , 2019 public hearing on the Ordinance. We do not address each and every comment received but rather address the major substantive issues raised by the comments overall, many of which were received from more than one person.

1. Definitions: Section 7-63

Multiple comments were received regarding the definition of terms in the Ordinance. Most, but not all, concerns were about the categories of people entitled to enhanced protections.

Elderly: Concerns were raised that 62 is too young for the designation of "elderly" given the age people generally retire and current life spans. The suggestion was made that the age of 62 should be changed to the age at which the tenant starts receiving social security benefits.

Recommendation/Rationale: **The Administration recommends adopting this comment and changing the definition of elderly to sixty five (65) years of age.** We would note that, if adopted, the age of 65 would be a higher threshold for enhanced protections than the age of an elder under the state condo law (62). However we acknowledge that the state law was drafted in 1983 and that 65 may better reflect the current typical span of employment. We would also note that persons under 80% of Area Median Income will have protected status regardless of age.

Handicapped:

(a) Replace the term "handicapped" with the term "disabled": A recommendation was received that the term "handicapped" be replaced with the word "disabled."

Recommendation/Rationale: This change was already made by the Administration in its January 17, 2019 draft as the term is reflective of more current language usage.

(b) Substantive Definition of "disability": A comment was made that the definition of "disabled" is too broad and would allow anyone with, for example, asthma or ADHD to qualify as disabled.

Recommendation/Rationale: **The Administration recommends leaving the definition of disabled as is in the current draft.** First, the definition of "disabled" in the Ordinance is drawn from the language of a state law, M.G.L. c. 239, §9, which is the statute defining when a tenant is entitled to extra time in an eviction due to disability or certain other hardships. A question was posed in comments as to what kinds of disabilities might qualify someone as "disabled" and whether it was true that someone with asthma or ADHD would be considered disabled. The definition of disability here, as in fair housing laws as well as federal and state disability benefit programs, does not turn on the *type* of disability but rather how seriously the disability impairs a person's functioning. Under the Administration's proposed definition of disability (entitling the tenant to extra protections under the Ordinance) there has to be a *substantial* limitation in (a) functioning or (b) the ability to search for an appropriate housing unit. Separately, a person could have disability status if they are limited to a subset of unit types such as a first floor unit. So if asthma or ADHD ***substantially*** limits a tenant's functional abilities in a variety of areas or their ability to search for alternate housing, they could qualify as disabled. However, a person with ADHD or asthma that only mildly or moderately limits their functioning would not be considered disabled. We think this definition strikes the right balance for affording enhanced protections to persons with disabilities.

Household: One commenter was concerned that rights might attach to persons in households that are occupying a unit without the knowledge or consent of the owner as currently defined.

Recommendation/Rationale: The Administration understands the concern of the commenter and proposes to change the definition to apply to tenants rather than occupants. The definition of "household" would therefore be all tenants who occupy a unit in a housing accommodation.

Low/Moderate Income Tenant: Several concerns were raised regarding the proposed definition of "Low and Moderate Income Tenants" entitled to extra protections. Concerns were raised about 1) whether students who may be temporarily low income should be excluded from this definition and 2) whether there should be an asset test so that low/moderate income tenant status would not be based solely on income. It was suggested that other housing programs have limitations on students and assets.

Recommendation/Rationale: The proposed definition of Low/Moderate Income Tenant comes from the state condo conversion law and is therefore consistent with the definition being used to establish the need for extra protections in most cities and towns throughout the state.

Students: In regard to students being exempted from other housing programs, there is no prohibition on students accessing public housing programs. The Section 8 and Low Income

Tax Credit programs do have limitations on ***full time*** students accessing certain subsidized housing programs. There are, however, many exemptions to the student limitations including single parents who are full time students, couples where only one member is a full time student and certain students with disabilities. ***Generally, only households where all members are full time students who are not otherwise eligible for an exemption are excluded***.

Recommendation/Rationale: Given the complexity of determining who should and should not be excluded from receiving enhanced protections due to student status, the fact that student status will likely change during the notice period, and the relative infrequency with which this situation is likely to occur, **the Administration recommends leaving the definition of "Low/Moderate Income Tenant" as is in the proposed Ordinance without specifically excluding full time students**. In the event that the City Council does specifically exempt full time students from extra protections it is important that single parents, those both working and in school full-time, those paying for school without financial assistance from family and other vulnerable student populations be provided the enhanced protections under the proposed Ordinance. Also, given that enhanced notice period and relocation expenses for low and moderate income tenants apply to a "household" and not to individuals, any student disqualification should only apply where everyone in the household is an excluded student.

Assets: It was suggested in a comment that it may be unfair to consider as low or moderate income a tenant with significant assets. It was suggested that assets are used to determine eligibility for other housing programs. There are no asset tests for admission to public housing or the tenant based and project based Section 8 programs. To the best of my knowledge, there are no asset limits for any of the subsidized housing programs in the city. The only type of affordable housing in Somerville that has an asset test for determining eligibility is the City's inclusionary housing program.

Recommendation/Rationale: Given the added complexity of establishing and verifying assets and the fact that tenants around the state that are low and moderate income receive enhanced protections when their homes are converted to condos without the need to prove the amount of their assets, it is the Administration's recommendation to leave the definition of "Low/Moderate Income Tenant" as is in its current form without an asset test.

2. Right to Purchase: Section 7-64 (4)

Comments were received regarding a) whether the time frame for allowing a right to purchase of 120 days for everyone and 180 days for those with enhanced protections is too long or too short, and b) how the value of an "as is" property should be determined given that some renovations may be required in order to convert.

(a) Time frame for exercising right to purchase: We received some comments to the effect that the time frame for allowing the right to purchase is too long and not reasonable given how long it takes for a person to seek and obtain financing. We received other comments that the time frame is too short especially since condo conversion may be coming to a tenant unexpectedly and that an additional ninety (90) days should be allowed on top of the current 120/180 timeframe.

(b) Offering more favorable terms: We received a comment that pointed out an issue with the timeframe for the right to purchase. An elderly/disabled/low or moderate income tenant has 180 days to exercise their right to purchase. This is the same amount of a time an owner cannot offer the unit to another buyer at more favorable terms (180 days), and these two timeframes run concurrently. Because these two timeframes run concurrently, this cannot serve its intended purpose of ensuring that the tenant is offered a fair price for the unit and not an inflated price.

Recommendation/Rationale: The Administration recommends leaving the time frame for the right to purchase at 120/180 days. We believe this balances of the needs of tenants and non-profits to successfully purchase a building with the need of an owner to sell their building in a reasonably prompt time frame. The 120/180 day right to purchase timeframe occurs within the notice period, not after, so this time will not necessarily lengthen the amount of time an owner must wait before they can sell their unit.

The Administration recommends shifting the 180 day period where the owner cannot sell the unit at more favorable terms to only begin once the tenant has either waived their right to purchase or the notice period ends. Rather than not allowing the owner to sell at more favorable terms for 180 days, the Administrations recommends shortening the timeframe to 90 days from the date that the tenant either waived their right to purchase or 180 days have lapsed, whichever comes first.

(c) Pricing for "as is" unit: A few commenters were concerned about how an "as is" price could be determined initially for purposes of the right to purchase before required renovations are completed. Some questions were also raised about what kind of evidence would be needed to prove an "as is" price and what would happen if disputed.

Recommendation/Rationale:

Required repairs versus optional upgrades: These comments prompted us to do some research about what kinds of renovations need to be performed in order to convert to condominiums. This question is different from the question of what renovations an owner may choose to perform. The intent behind requiring an "as is" purchase price is to allow a tenant or non-profit to purchase at the most affordable price by not building in the cost of voluntary upgrades to the unit that an owner might choose to perform. **We recommend any "as is" price point should include a per square foot cost of any repairs required to be performed in order to sell a unit as a condo. We are still in the process of trying to determine what repairs are required in order to sell a condo unit and by whom they are so required.**

Disputing the "as is"/fair market price: In addition to the concern raised above, questions were raised about how the "as is" price is determined. The Administration opted not to require any particular form of verification of an "as is" price other than to require that the price reflect fair market value. There is a built in incentive for the owner to set a fair market price since they cannot sell the unit at a lower price for a set period of time after the conclusion of the right to purchase, as discussed above. As currently drafted, if there is a dispute the onus would be on the tenant or the city/designee to file suit if they believe the

price requested is not a fair market price. **Except as provided above, the Administration recommends leaving the language regarding sales price as it currently reads.**

3. <u>Freedom from unreasonable disruption:</u> Section 7-64(1)(b)(viii)

One commenter noted that renovations are generally required to convert to condominiums. They queried whether the fact that the owner needs to do renovations at least on common areas and some units is compatible with the tenant's right to freedom from unreasonable disruption.

A separate group of commenters also found renovations inconsistent with the right to be free from unreasonable disruption. They felt that repairs are often used to "strong-arm" tenants to move out and they suggested that the Ordinance be amended to require CRB approvals of any plans to do construction or repair work that requires a building permit in an occupied building undergoing conversion.

Recommendation/Rationale: The Administration thinks the proposed language should stay as is in regards to unreasonable disruption except that 1) we recommend adding the phrase "breach of quiet enjoyment" to the provision on prohibited activity and 2) we propose that the Review Board establish a set of rules regarding the performance of renovations in an occupied building. First, we would note that the prohibition against unreasonable disruption is contained in the existing condo ordinance, the proposed ordinance, and the state law. The language of sections 7-64 (1)(b) (viii) and 7-64 (8) does not prevent repairs in common areas or vacant apartments, but rather requires that any repair-related disturbance not be unreasonable. In our experience, similar language generally has been seen to give tenants a handle to ensure that repairs/upgrades are performed during reasonable hours/days, that workers clean up after themselves and do not leave hazards in hallways, that dust mitigation is performed by sealing off work areas, and that tenants are notified of schedules for repairs/renovations and who to call if there is a problem. Ultimately, a court could be the decision maker as to whether unreasonable disruption occurred. Note that it is generally considered to be within the tenant's right to say that they do not want renovations that are not mandatory (required for the conversion or required by law) performed in their own units. We recommend adding the term "quiet enjoyment" to this section as the term "breach of quiet enjoyment" has frequently been interpreted by the Courts and thus has some understood meanings. Last, because conflict does often arise when an owner renovates a building with some vacant and some tenanted units we recommend that the Review Board establish rules for renovations in a tenanted building which the owner would have to follow (days, times, notice, clean-up, etc.)

4. <u>Relocation Payments</u>: Section 7-64 (5)

(a) <u>Amount of relocation payments</u>: One commenter noted that the Administration's justification for setting the amount of relocation expenses was based on a Rent Café estimate for a two bedroom unit of $3,212/month. The commenter noted that this seemed high and that a Zillow listing showed an average of $2,522 per two bedroom for the first seven listings and therefore, that relocation expenses should be adjusted accordingly. Another group of commenters felt that it was insufficient for a displacing

owner to pay only $6,000 in relocation expenses where there might be three different tenants needing to relocate possibly to different locations. They thought the $6,000 or $10,000 figures should be per tenant rather than per household.

Recommendation/Rationale: **The Administration thinks that relocation expenses should remain at $6,000 and/or $10,000 per household.** The Administration acknowledges that the $3,212 figure came from one source only that may not have been representative of unit rental costs in Somerville. However, even using the $2,522 figure for a two bedroom relocation expenses could be as follows: $2,522 x 4 = $10,088 (first, last, security, realtor) plus packing and moving expenses. Thus, even if rents are lower than the $3,212 figure cited, relocation expenses could well exceed $10,000. It should also be noted that, for simplicity's sake, the relocation payment amount is not dependent on unit size.

(b) Timing of relocation payments: One group of commenters said that tenants should have direct access to the full amount of relocation payments in advance of moving without the payments being made to a third party. They indicated that being beholden to the landlord for third party payment is cumbersome and not in line with the realities of the market which require quick access to bank checks.

Recommendation/Rationale: The Administration recommends keeping the timing of relocation payments as is in the current proposed Ordinance. In general, the intent of the payments is to compensate tenants for the costs of relocation. Owners do have a right to ensure that the "relocation" payments they make are, in fact, in exchange for relocation. The language in the proposed Ordinance was intended to balance the interests of the tenants and owners. The proposed language both ensures that tenants have access to funds to facilitate their moves while at the same time ensuring owners they will not pay $10,000 and then have to forcibly evict a tenant.

5. Exemptions from the twelve month vacancy requirement: Section 7-64 (1)(a)

In general, the purpose of a twelve month waiting period prior to issuance of a conversion permit is to discourage the emptying of buildings to avoid compliance with the Ordinance. A number of commenters raised the fact that there are situations where units may be converted vacant having nothing to do with avoiding the requirements of the Condo Ordinance. Some examples were provided such as owners who are seniors and no longer want to be landlords, siblings who co-own a two family and one passes away, and an owner who wants to keep a unit vacant to allow family to visit. There was a suggestion that where a unit was previously vacant for 6-12 months the owner should not have to wait twelve months for a conversion permit.

Recommendations/Rationale: The Administration agrees there are some circumstances under which exemptions should be granted from the twelve month waiting period such as the following and recommends that the Ordinance be revised accordingly:

(i) Where the unit had been previously owner occupied for a minimum of twelve months; and

(ii) Where the City or Designee purchases the vacant unit for the purpose of deed-restricting it for affordability.

6. <u>Issuance of Permit and Hardship Criteria:</u> Section 7-67(2)(d)

Several comments were received regarding the criteria for granting permits. In particular, commenters were concerned that a permit could be denied if "the hardships imposed on the tenants justify a denial" even if they had already complied with all the requirements of the Ordinance. Comments found this standard overly vague and lacking in guidance to the tenant, owner or Condo Review Board about when a permit can be denied based solely on hardship. Suggestions were made that this provision be eliminated or more clearly defined.

Recommendation/Rationale: The Administration agrees with commenters that this provision does not provide the parties with sufficient guidance as to when permits can be denied given that concepts of hardship are already built into the enhanced protections for vulnerable tenants. It is the Administration's recommendation that this language be eliminated.

7. <u>Duty of Owner to Locate Comparable Rental Housing:</u> Section 7-64(1)(b)(vi)

Several commenters noted that they thought it was unreasonable to require owners to find comparable rental housing given how difficult this would be to achieve. One commenter said this obligation should be transferred to the City.

Recommendation/Rationale: The Administration recommends that the language regarding the need for an owner to find comparable housing should remain as is in the proposed Ordinance. First, understanding that some landlords were renting below market and for these landlords it would be difficult to find comparably priced housing, the Ordinance already exempts these owners from the housing search requirement. Second, it is still the opinion of the Administration that owners are in a better position than tenants to find comparable rental units. For example, they may own other units that could be offered to the tenant for relocation, or they may know other owners or management companies and thus have better access to vacancy information than a tenant. It should also be noted that if the owner is not able to identify comparable housing, the notice period may be extended but failure to find a comparable unit does not mean a conversion permit will be denied.